



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

# THE AMERICAN LAW REGISTER.

---

NOVEMBER 1878.

---

## IS THE BAR UNPOPULAR?

IT is assumed by the lay press that the legal profession is unpopular, and by the uneducated masses that it is even odious. Hence the modern item gatherer and pun manufacturer of the daily papers can find no morsel which he deems so palatable to his readers as a practical joke, in which a lawyer is the subject of ridicule. And for the same reason the modern lecturer who addresses the most refined, educated and cultivated audience, feels that he has not earned his money until he provokes a hearty laugh at the expense of the lawyers.

Let us inquire for a moment the cause of this apparent unpopularity, and then whether it is only *apparent* or whether it is *real*.

There is no employment which brings men in such public and hostile contact with men of all pursuits as does the legal profession. In every town in the whole country are periodically held the courts, in which, from time to time, the public and private rights of the whole community are more or less in some sense involved. Hence the attention of the public is constantly directed towards the courts, in which the lawyers are the principal actors, and in the rural districts the people who have no interest in court litigation attend the court sessions, and manifest the same interest in the strifes between the lawyers in the management of their cases that the ancient Romans did in the gladiatorial exhibitions held for their amusement. The clever sallies of wit and

repartee occurring between the lawyers, in the course of a court trial or argument, are the subject of comment in the different neighborhoods in the county from one term to another. In this way the profession are constantly under the observation of the public, and are the subject of criticism, friendly or unfriendly.

Again: In court trials all the parties, and generally most of the witnesses, are brought into hostile contact with the lawyers; for when it is considered that suitors of other professions, even the most intelligent, insist upon regarding their adversary's lawyer as unfriendly to them, it would not be strange if the profession were really unpopular. In the conduct of causes, in the cross-examination of witnesses, the argument of questions of fact, and in the general discharge of the duties of a lawyer in a court trial, the motives, the language, the manners and behavior, and the lives and characters of parties and witnesses are constantly the subject of discussion, examination and criticism, more or less unfavorable, and often necessarily unfriendly and hostile. This is unavoidable, and even when done in the most careful and considerate manner gives offence, and the more so because court proceedings are never understood by the people, not even by the intelligent, and courts and lawyers are popular subjects of criticism. Indeed, when it is considered that they spend most of their time in uncovering and exposing dishonesty and crime among all professions, and in all classes and ranks of society, it could hardly be expected that they should be favorites. And this necessary hostility in court proceedings, is increased by want of proper consideration, courtesy and discrimination on the part of counsel in dealing with witnesses and parties.

But the prominence and hostile position of the profession apply alike to the good and bad, and the public manner in which its duties are discharged renders the exposure of the misdeeds of unprincipled lawyers notorious, especially so, as the court and the adverse counsel, in every case, are a check and a means of detection. While the close and secret manner in which his misdeeds are performed, prevent the detection of the quack in medicine or the trickster in trade, the adverse lawyer, the court, and the public manner in which his duties are performed, expose the tricks of the shyster, and thus, while the former are proportionately quite as numerous as the latter, and it may be far more so, it does not appear so to the public.

There is a class of men who have entered the profession, and for want of adaptation have abandoned it, and usually with their distaste they carry with them a certain aversion to it; added to this is the temptation which their familiarity with the subject gives them to utilize this, in catering to what seems a popular prejudice by making the profession a subject of ridicule and caricature. A notable illustration of this idea is found in the writings of the late Charles Dickens, perhaps the most skilful delineator of character of all the fiction writers of the age. Apprenticed to a lawyer and finding the profession uncongenial, he soon abandoned it and betook himself to the use of his pen as a writer of fiction. In this field he selected his characters largely from the lower ranks of society, and among them is always found the lowest stratum of the legal profession. But rarely, if ever, in his fictitious creations, does he introduce a lawyer of respectable attainments, and if he does, he is sure to be a trickster. Hence Dickens's characters, from the legal profession, are usually *shysters*, and the result is, the readers of Dickens, the most numerous class of readers in this country, in this generation, contract much of the popular prejudice against the legal profession from these creations of the author's imagination, aided, doubtless, by his association with the very class of men he describes about the purlieus of the Inns of Court in London during his apprenticeship. The same may be said of Samuel Warren. His only really successful effort, "*Ten Thousand a Year*," owes its great popularity to the skill and aptness of its author in the art of caricaturing. And this skill is manifested in the history of a litigation, wherein a shallow-pated knave, as client, is conducted through a long and apparently successful litigation, terminating in the recovery and temporary enjoyment of a magnificent estate, by as precious a trio of villains, called lawyers, as ever disgraced the profession or escaped the penitentiary. But as a caricature even, the history of the lawsuit itself is too gross for the *amusement* of one at all familiar with legal proceedings. And yet, owing to these very peculiarities, the book has had great popularity among the people. And so audacious is the presumption of the publishers of the book, of late, that they actually issue circulars recommending it to lawyers as containing an instructive history of a suit in ejectment. This simply shows the ready credence given of caricature, both of legal proceedings and of lawyers, by books of this class. Men

who do not know the names of Erskine, Brougham, Webster, Choate, Curtis, Dana, or Reverdy Johnson, are more than familiar with the names of Quirk, Gammon & Snap; of Sergeant Buzfuz; of Spenlove & Jorkins; of Perker, of Uriah Heap, or of Guppy, and a score more of the despicable fictitious creations of the imagination, introduced by these authors, and sketched with the pen of an artist. And these degraded representations have a very great influence in forming a public sentiment unfavorable to the profession.

Again, there are to be found among the profession a considerable number of its regular members, some of them very able, but from want of adaptation, not succeeding well, who are ready to join in the popular clamor. Others again, who are politicians or born demagogues, give countenance to what they think a popular prejudice. Even Burke, who though a great advocate and orator was also a great demagogue, belonged to the class of lawyers who are willing to traduce their profession and degrade the courts in the estimation of the people, to gain the applause of the gaping populace.

Still another class of lawyers who countenance this apparently popular prejudice are those—usually amateurs, perhaps—who deliver addresses to graduating classes in law schools, wherein they always tell the young men that there is a manifest decline in the American bar, and it is their destiny to lift it up. These addresses seem to stimulate the young men for the time being, and perhaps mislead them by inducing them to think they greatly excel their predecessors; but this is a mistake they will soon find out. And as such productions are rarely read by any one else, they are but straws in the current, and are comparatively harmless.

Another cause of the countenance to this apparent popular prejudice, results from the mistakes by which good men, able and intelligent writers in our law periodicals, good lawyers it may be, give countenance to it, and assuming that the American bar is declining, and that it is unpopular, proceed to try to explain the reason, to apologize for the fact, and look around for a remedy. Of this latter class is Mr. C. H. Hill, who is the writer of a lengthy article in the January number of the *American Law Review*, entitled "*Jeremiah Mason and the Bar*," which, after admitting that in extent of learning and breadth of culture the American bar is advancing rather than declining, closes as follows:

"In speaking of law, there is one thing that should not be overlooked. There is no denying the fact that, in both England and America, the legal profession has always been unpopular; that no little jealousy is entertained of it; and that it has ever been a favorite subject of attack and ridicule. It has heretofore maintained a position which has attracted ambitious men to it; and its social rank has been high, though now it is probably declining. The reasons for this last are various. At one time in this country, eminence in the law led the most speedily of all roads to high political honors, so that the majority of the famous lawyers of past generations added to their professional reputation political distinction. Samuel Dexter, Mason, Harper, Pinkney, Webster, Crittenden, Ewing, Sprague, Choate and Reverdy Johnson, were early elected to the United States Senate. Many more were sent to the House of Representatives, or held high offices. What was once the rule has become the exception. Very few of the active politicians have any position at the bar. To look over the Congressional Directory, it would still seem as if the great majority of the members of both houses were lawyers; but most of these either left the profession early, or never gained any reputation in it, or else have merely a nominal connection with it, having been admitted because it seemed the natural profession for a public man, or in hopes of getting occasionally a stray political retainer. With rare exceptions, the names of the eminent lawyers of the country are not there. \* \* \* \* \*

"But, however desirous people may be to enter the profession, the fact of its unpopularity with the outside public remains. We have no room now to inquire into all the causes of this; but one of them, we must in justice confess, is the proverbial misdeeds and chicancery of many lawyers, and the injustice and oppression, which are the result of these." \* \* \*

The assumption in this quotation of the unpopularity of the bar, raises the last inquiry suggested at the outset, and an examination of the assumption, with the arguments or assertions in the quotation in support of it shall conclude this article.

Some of the reasons for the supposed unpopularity of the bar have already been considered, and need not be repeated. But it is a sufficient answer to the alleged reason for this unpopularity to show that it does not exist. The questions then recur, is the American Bar unpopular? Is it declining in political and social

position? The alleged unpopularity and decline are both based upon the proposition that in the highest political positions *very few leading or eminent lawyers are found*. Is this position well-founded? It is admitted that formerly it was different. Not to speak of the fact that the president and all his cabinet are lawyers, and all but one men who won their present position at the bar, and stepped from its active duties into the cabinet, a call of the Senate roll alone and an examination of the history of its members, will show that there never was more legal ability in that body during any twenty years of its history, than during the last twenty, taking into consideration even the numbers. And at the present time, it will bear comparison in this respect with any period in its history. It may be admitted that there is no one on the stage equal in forensic ability to Webster; but the very highest forensic power is one thing, and genuine legal ability is another; they may exist together, in combination or separately. A great lawyer may be a great orator or he may not be, perhaps usually is not. Mr. Webster's eulogists and critics do not agree as to the question whether his legal attainments were equal to his reputation. Indeed, there can be little doubt that in this respect his peers are in the present senate. But as "*leading lawyers*" and "*eminent lawyers*" are the terms used, this inquiry is hardly relevant. In order to answer the imputation that lawyers of this class are few in the Senate, it might be sufficient for any lawyer acquainted with public men, to read the names of the Senate judiciary committee. But if this is not sufficient, it may be added, that among the members of that body as now constituted, are found one who declined the position of chief justice of the United States, and who was regarded by the bar as eminently qualified for it; another who declined the position of circuit judge in the chief circuit in the country, and whose qualifications no one for a moment questioned; another who was elected while holding the position of associate justice of the Federal Supreme Court. Half a dozen or more have held the position of judge in the highest court of their respective states, two of this number having been elected while holding their positions as judges, and one having held the position of attorney-general of the United States, for which he had left the bench. Add to this that more than half the remainder came to their present positions directly from the head of the bar of their respective states; that many of them retain their connection with the

profession by partnership or otherwise, during their terms, and practice during the vacations in the courts; and that among the very leaders of the profession, lawyers who stand at the head of the bar of the Supreme Court of the United States, are several who have but recently been senators, their terms now having expired, and the question as to the Senate must be settled against the popular assumption.

How is it in the House? Proportionally to the Senate perhaps, the number of the lawyers of the very foremost rank is not as large in the House, but this again results from maturity more than any thing else, the *Nestors* of the profession, in large numbers, have been promoted from the House to the Senate. The members of the House are as a rule lawyers, in about the same proportion as the senators, and they are far more actively identified with the practice, during their terms than are the senators. Their terms are short and precarious, and the great body of them remain in the House but short periods, and hence they almost invariably hold on to the profession even during their terms in the House. If any one will visit the sessions of the Supreme Court every day for a month during the session of Congress, and listen to the able and polished arguments which are made by members of the House in that court he will be amply convinced that leading lawyers in considerable numbers are found even in that body. It can hardly be denied that the lawyers, skilled in the law, fresh from the work of the profession, in both houses, shape and control the legislation of the nation, as they always have done. And that for a man in either house from any other profession to become a leader is a thing so exceptional as to excite surprise. It will be remembered that within the last two years a member from another pursuit having, from superior ability, become a leader of his party in the House, was taunted because of his ignorance of the *law*, the censor not suspecting it possible that any but a lawyer could occupy his position, and when informed of his mistake apologized.

On the occasion of the death of Mr. Seward the *London Times* eulogizing him said, in substance, "he belonged to a class of statesmen common in America but little known in England. They are men bred to the law, who enter politics, are elected to Congress, hold the highest political positions, but still retain their hold upon the profession, and while they became eminent as statesmen, became equally so as lawyers." And it might be added that there never



was a time when this class of statesmen were more numerous than at the present.

The assertion that the high social rank always occupied by the bar is declining is as baseless as is the charge of decline in political rank and influence. But the charge can have no application except among a certain shoddy aristocracy, found in some large cities, where money is the sole standard of social rank. Mr. Hill must have intended his remark upon the social position of the bar to apply to this *money* aristocracy, which is but an insignificant fraction of the great body of American society, wherein the bar always have occupied, still do, and always will occupy the very foremost rank.

It needs no argument at this day to prove that which is matter of current history. That every department of the government of this country, state and national, is under the direct control of the profession. That from its ranks came the President, the Cabinet, the leaders of both houses of Congress and nearly all our foreign ministers; the chief cabinet officer being one of the ablest if not the ablest lawyer in the country, and that he stepped from the law office to the premiership.

In the face of these admitted or incontrovertible facts, any assumption of decline, either in political or social rank, must be pronounced untenable.

If it be said that the evidence of unpopularity referred to in the fore part of this article, and the claim of rank and influence just made are paradoxical, the answer is that it is only the difference between the seeming and the real. The bar are criticized, and apparently more severely than formerly, because through the press everybody knows what occurs everywhere, and this seems evidence of unpopularity and decline in position. But on the other hand the bar are honored and promoted in a manner unknown to all other professions. And this too, by the people themselves who criticize them, and seemingly so heartily enjoy the shafts of ridicule hurled at them by those who cater to an apparent, rather than a real public sentiment. That the classes to which reference has been made, should predicate unpopularity and decline, in social and political position, of the unfriendly criticism above referred to, would not be surprising. But the profession would hardly expect it from one of their number in the face of such overwhelming evidences of the public favor.

ASA IGLEHART.